IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2999 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PARBATBHAI MULJIBHAI KAKADIA

Versus

SUB REGISTRAR (REGISTRATION OFDOCUMENTS)

Appearance:

1. Special Civil Application No. 2999 of 2003

MR RS SANJANWALA for Petitioner No. 1

MR HD DAVE, ASST. GOVERNMENT PLEADER for Respondent No. 1

MR BB NAIK for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE A.R.DAVE

Date of decision: 09/03/2004

ORAL JUDGEMENT

Rule. Service of rule is waived by learned AGP

Shri HD Dave for respondent No. 1 and learned Standing Counsel for the Income-tax Department Shri B.B.Naik for respondent No. 2. At the request of the learned advocates, the petition is finally heard today.

2. The petitioner has purchased part of lands bearing Survey Nos. 408 and 675 situated at Dumas, District Surat. According to the case of the petitioner, two different sale deeds had been executed by the sellers as well as the petitioner purchaser, but the said sale deeds are not being registered by respondent No. 1 as per the provisions of the Registration Act, 1908. It is the case of the petitioner that the documents submitted to respondent No. 1 have been retained by him without passing any order thereon, and upon inquiry, the petitioner has been informed that respondent No.1 has not registered the documents because of a communication received by him from the office of respondent No. 2. Two letters dated 26.2.2001, which respondent No. 1 has received from respondent No. 2, are at Annexure 'E' (colly.) to the petition.

3. In pursuance of notice issued by this court, respondent No. 1 has filed his affidavit on 30.4.2003 stating that in pursuance of the communication received by him from respondent No. 2 dated 26.2.2001, he has not taken any action for registering the sale deeds. It is his case that because of recovery proceedings pending against late Shri Hanskamal Grover and his heirs by virtue of orders dated 26.2.2001, respondent No. 2 has restrained him from registering any document in respect of the lands referred to hereinabove as late Shri Hanskamal Grover had interest in the lands, which are subject-matter of the sale deeds.

4. Learned Standing Counsel Shri B.B.Naik has submitted that though letters dated 26.2.2001 had been addressed to the heirs of late Shri Hanskamal Grover and copies of the said letters had been addressed to respondent No.1 requesting him to send copies of sale deeds or other documents executed by late Shri Hanskamal Grover and/or his group members to respondent No. 2, he has so far not received any communication from respondent No. 1. It is the case of respondent No. 2 that the land in question possibly belonged to late Shri Hanskamal Grover or his group members in the past. As recovery proceedings are pending against the heirs of late Shri Hanskamal Grover in respect of tax liability of late Shri Hanskamal Grover, respondent No. 2 has rightly instructed respondent No. 1 not to register any document in relation to the lands referred to hereinabove.

5. In pursuance of a query put by this court as to whether respondent No. 2 has completed inquiry in pursuance of an order passed by this court dated 1.7.2003, the learned Standing Counsel has submitted that the inquiry could not be completed as some record could not be perused by respondent no. 2 since the said record is in possession of the police authorities. The learned Standing Counsel was unable to produce on record any material to show that late Shri Hanskamal Grover or his group was owner of the lands in question in the past at any point of time.

6. Upon hearing the learned advocates and upon perusal of the record pertaining to the case, it appears that respondent No. 2 is having a belief that late Shri Hanskamal Grover or any person belonging to his group was having right in respect of the lands in question and, therefore, so as to see that the dues payable by late Shri Hanskamal Grover are paid from the sale proceeds of the land in question, respondent No. 1 was instructed not to register any transfer in relation to the lands in question as the lands in question had been attached by the Income-tax Department. By virtue of letters dated 26.2.2001, respondent No. 2 had requested respondent No. 1 to forward copies of deeds executed in favour of late Shri Hanskamal Grover to satisfy himself to the effect that the lands in question belonged to late Shri Hanskamal Grover. It appears from what has been submitted by learned AGP Shri Dave that till today, respondent No. 1 has not given any intimation to respondent No. 2 or has not sent copies of any document registered in his office in relation to the lands in question.

7. Looking to the peculiar facts of the case, it appears that the ends of justice would be served if respondent No. 1 is directed to find out from his record whether late Shri Hanskamal Grover or any of his family members was ever an owner of the land in question. If, by virtue of any document registered in his office, it can be found that late Shri Hanskamal Grover or any of his family members was either an owner or was having any interest in the lands in question, copies of the documents, whereby ownership or interest in the lands in question had been transferred to late Shri Hanskamal Grover, or any of his family members, shall be forwarded by respondent No. 1 to respondent No. 2 within a period of 3 weeks from the date of receipt of this order by him. If no such document is found, intimation of the said fact shall be given by respondent No. 1 to respondent No. 2.

8. Upon getting information from respondent No. 1, respondent No. 2 shall take an appropriate decision. If he comes to a conclusion that late Shri Hanskamal Grover or any of his family members was not having any interest in the lands in question, he would withdraw the earlier instruction given to respondent No. 1 under his letters dated 26.2.2001. The said decision shall be taken by respondent No. 2 within four weeks from the date of receipt of information from respondent No. 1 and the decision taken by him shall be communicated to respondent No. 1.

9. If the lands in question never belonged to late Shri Hanskamal Grover or any of his family members, respondent No. 2 shall pass an appropriate order and shall give necessary information to respondent No. 1 and in that event, respondent No. 1 shall register the documents, whereby the lands in question were transferred in favour of the petitioner.

In view of the above direction given to the respondents, the petition stands disposed of as allowed. Rule is made absolute to the above extent with no order as to costs. D.S. permitted.

(A.R. Dave, J.)

(hn)